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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,069	02/27/2004	Joachim Feld	2003P00335US	9170

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SIEMENS CORPORATION
INTELLECTUAL PROPERTY DEPT.
170 WOOD AVENUE SOUTH
ISELIN, NJ 08830

EXAMINER

WEIDNER, TIMOTHY J

ART UNIT	PAPER NUMBER
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2609

MAIL DATE	DELIVERY MODE
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08/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/789,069	FELD ET AL.
Examiner	Art Unit	
Timothy Weidner	2609	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 February 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 February 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/27/04</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Claims 1-10 are currently amended.

Claims 11-18 are new.

Claims 1-18 are pending.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

Figure 3 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 8 recite the limitation "the end of the second phase". There is insufficient antecedent basis for this limitation in the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-7, 9, 10, 12, 14, 16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaffer et al. (U.S. 5,960,001, herein "Shaffer").

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Regarding claims 1, 6, and 10, Shaffer teaches a method, system, and usable portion of a switchable data network for transmitting data in a switchable data network, comprising users having mechanisms for sending, receiving, and/or forwarding data telegrams (figure 2, item 112; column 5, lines 54-67), wherein the telegrams having a beginning and an end (column 2, lines 62-67; column 4, lines 5-10) and wherein the telegrams are assigned priorities (column 2, lines 11-16), wherein a first usable portion is used during a first phase for sending data telegrams assigned a first priority to a second usable portion (column 4, lines 49-67; column 5, lines 1-10), with the first phase having a defined receive time of the end of the respective data telegram at the second usable portion (column 4, lines 49-67; column 5, lines 1-10).

Regarding claims 2 and 7, Shaffer teaches the first users are provided during a second phase after the end of the first phase for exclusively sending data telegrams (column 4, lines 49-67; column 5, lines 1-10) assigned a second priority (column 2, lines 11-16) to the second users.

Regarding claims 4 and 12, Shaffer teaches the first phase is cyclically repeated (column 3, lines 14-26).

Regarding claims 5, 9, 14, 16, and 18, Shaffer teaches the system for transmitting realtime data is provided in the switchable data network, with the realtime data telegrams being assigned the first priority (column 1, lines 50-59; column 2, lines 11-16).

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3, 8, 11, and 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al. (U.S. 5,960,001, herein "Shaffer") as applied to claims 1, 6, 2, and 7 respectively above, in view of Schenkel (U.S. 5,157,659).

Regarding claims 3, 8, 11, and 17, Shaffer teaches a first phase and a second phase (column 4, lines 49-67; column 5, lines 1-10), but does not teach the first users are provided during a third phase after the end of the second phase for sending data telegrams assigned any priority to the second users.

Schenkel, which is in the same field of endeavor, teaches the first users are provided during a third phase after the end of the second phase for sending data telegrams assigned any priority to the second users (column 24, lines 28-46) for the purpose of allowing packets within each priority to be transmitted at lower and lower

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rates. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have data telegrams assigned any priority be sent in a third phase after the second phase to allow packets within each priority to be transmitted at lower and lower rates.

Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al. (U.S. 5,960,001, herein "Shaffer") in view of Schenkel (U.S. 5,157,659) as applied to claim 3 above.

Regarding claim 13, Shaffer teaches the first phase is cyclically repeated (column 3, lines 14-26).

Regarding claim 15, Shaffer teaches data telegrams with realtime data are assigned the first priority (column 1, lines 50-59; column 2, lines 11-16).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hayakawa (U.S. 5,935,267) teaches phases based on end timing. Delp et al. (U.S. 6,028,843) teaches three priority timing wheels. Naik (U.S. 2004/0205206 A1) teaches planned start and end times. Toyofuku et al. (U.S. 5,301,193) teaches delay distortion suppressing for ATM communication system. Teng (U.S. 4,642,758) teaches known start and end times.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy Weidner whose telephone number is (571) 270-1825. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM, EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Garber can be reached on (571) 272-2194. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TJW

A handwritten signature in black ink, appearing to read "T. J. Welch".